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IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1965

No. ~~1264~~ 113

MORRIS PARK, INC., APPELLANT

VS.

ELIZABETH BUCK, APPELLEE

ON APPEAL FROM THE SUPREME COURT
OF THE STATE OF CONNECTICUT

REPLY TO MOTION TO DISMISS OR TO AFFIRM

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Francis B. Feeley
Counsel for Appellant
59 Central Avenue
Waterbury, Connecticut 06702

James T. Healey
Counsel for Appellant
66 Linden Sreet
Waterbury, Connecticut 06720

## REPLY TO MOTION TO DISMISS OR TO AFFIRM

Appellee's motion to dismiss or affirm appears to raise three points, somewhat intermixed.

1. Appellee suggests notice of various preliminary and subsequent proceedings cured any possible vice in lack of notice or opportunity for hearing at the unique, critical, substantive stage of determination of a fact on the merits. This is the same as saying that a defendant may be deprived of his right to council at his trial provided he is represented at his arraignment and appeal.

2. Appellee suggests that insofar as appellant was given a full hearing at certain stages of the proceedings it is immaterial that it was given no opporunity for hearing at the most critical stage.

It is conceded, even though not in the record before this Court, that on March 20, 1964, the Connecticut Trial Court's hearing on the question of lengh of time for redemption after foreclosure took into consideration evidence as to value of the property, this being an element required of the Court for this limited purpose. See Metopolitan Life Insurance Company v. Bassford, 120 Conn. 384.

But: 1. the Court made no finding as to value (see its Judgment, pages 7 to 9 of the Connecticut Supreme Court Record) and 2. whatever it may have considered or determined would have no effect upon, and probably would be unknown to, and definitely would not be binding upon, the appraisers, who are governed by Sec. 49-14 Conn. General Statues, and Equitable Life Assurance Society v. Slade, 122 Conn. 451.

It is also conceded that appellant had a full hearing before the Connecticut Trial Court on its Remonstrance. But the opinions below make it crystal clear that the Appellant was limited to a review as to matters of law and could not be heard on the merits. It is particularly significant that neither the trial nor the appellate Court made a finding as to value, and indeed considered themselves powerless to do so.

The essential point of this entire matter, denial of an opportunity to be heard at any time on the merits of the essential issue, value for the purpose of a deficiency Judgment, is totally ignored and sidestepped by the appellee. The Connecticut Courts did not ignore it; they decided such a right did not exist.

3. Appellee suggests that Appellant is attempting to raise a question in this Court not considered in the Court below. But the Connecticut Court stated that he appraisers "are not required to hear evidence or give notice of the meeting at which they make the appraisal." The Court further adopted the Equitable Life Assurance Society case which states the appraisers have "no power under the statute to summon witnesses or hear evidence."Insofar as the Connecticut Court passed upon these Federal Questions the suggestion in the Motion to Dismiss is groundless. Illinois ex rel McCollum v. Board of Education, 333 U.S. 203; Raley v. Ohio, 360 U.S. 423.

It is submitted that to fail to recognize that the question stated in III of the Notice of Appeal, substantially quoted on Page 6 of the Jurisdictional Statement, paragraph captioned "Question Presented," does not fairly comprise the language quoted by Appellee in her Motion to dismiss or Affirm, Page 5, B 1. (b) is to place an entirely undue burden on the English language. It is in essentials simply a transposition rather than a new theme.

Francis B. Feeley
Counsel for Appellant
59 Central Avenue
Waterbury, Connecticut 06702

James T. Healey
Counsel for Appellant
66 Linden Sreet
Waterbury, Connecticut 06720

END